

**REMARKS**

Claims 1-33 are pending in the present application. Claims 1, 9, 11, 28, and 33 have been amended.

Claims 1-33 are rejected. Claims 9-12 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 3-9, 13, 14, 23, 24, 28, 30-31, and 33 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,332,134 to Foster ("Foster"). Claims 2, 15-18, 25-27, 29, and 32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Foster in view of U.S. Patent Application No. 2002/0016769 to Barbara et al. ("Barbara"). Claims 10-12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Foster in view of Balto, "Creating Payment System Network: The Tie That Binds or an Honorable Peace?" ("Balto"). Claims 19-22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Foster in view of Bowen, "Behind the Spree in Payments for C2C" ("Bowen").

**Rejection of Claim 9-12 under 35 U.S.C. § 112, Second Paragraph**

Claims 9-12 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to claim 9, the Examiner requires clarification "as to how 'the third party acts as a merchant.'" Accordingly, claim 9 has been amended to recite "the third party receives the credit card payment, wherein the third party is a merchant acquiring bank" rather than "the third party acts as a merchant." Claim 33, although not rejected herein, has been similarly amended.

With regard to claim 11, the Examiner asserts that there is insufficient antecedent basis for "the credit card association fees." According, claim 11 has been amended to recite "a credit card association fee."

Claims 10 and 12 are rejected because of their dependency on the rejected claims, but because claims 9 and 11 are believed to be allowable, claims 10 and 12 are also believed to be allowable.

Therefore, the undersigned representative respectfully requests that the Examiner withdraw the rejection of claims 9-12 under 35 U.S.C. § 112 second paragraph.

**Rejection of Claims 1, 3-9, 13, 14, 23, 24, 28, 30-31, and 33 under 35 U.S.C. § 102(e)**

Claims 1, 3-9, 13, 14, 23, 24, 28, 30-31, and 33 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,332,134 to Foster ("Foster"). This rejection is respectfully traversed.

Foster does not disclose each and every element of the pending claims. More specifically, Foster does not disclose "if the first party does not have an account with the third party, by establishing an account for use in at least the electronic transaction," as recited in amended claims 1 and 28. In claims 1 and 28, the respective method and system allow for the first party (*e.g.*, a consumer) to establish a new account with the third party (*e.g.*, a bank) if the first party does not already have an account with the third party. Unlike conventional methods, however, the new account can be established with the third party *after* "receiving payment instructions electronically from the first party by a third party." In contrast, Foster recites a system where a first party (*e.g.*, a cardholder) only has an account with a third party (*e.g.*, a card company), but does not disclose establishing a new account after the payment instructions. "[A] cardholder makes a purchase from a merchant using credit *established* at a financial institution." Col. 2, line 67 - col. 3, line 2 (emphasis added). Thus, in Foster, the credit must already be established, *i.e.*, a credit card account must already exist. In fact, Foster only refers to the first party as a "cardholder" because the party must already have a credit card with the third party. Therefore, Foster does not disclose each and every element of claims 1 and 28.

For at least the reasons stated above, Foster does not disclose independent claims 1 or 28 of the present application. Therefore, the undersigned respectfully submits that independent claims 1 and 28 are allowable over the cited art. Further, dependent claims 3-9, 13, 14, 23, 24, 30-31, and 33 are also allowable as they contain the limitations of the claims on which they depend.

Thus, the undersigned representative respectfully requests that the Examiner withdraw the rejection of claims 1, 3-9, 13, 14, 23, 24, 28, 30-31, and 33.

**Rejection of Claims 2, 15-18, 25-27, 29, and 32 under 35 U.S.C. § 103(a)**

Claims 2, 15-18, 25-27, 29, and 32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Foster in view of U.S. Patent Application No. 2002/0016769 to Barbara et al. ("Barbara"). This rejection is respectfully traversed. Claims 2, 15-18, 25-27, 29, and 32 are

dependent upon claims 1 and 28 which are submitted to be allowable in view of Foster for the reasons set forth above. Accordingly, claims 2, 15-18, 25-27, 29, and 32 should be allowable under Foster for these reasons as well. Further arguments are reserved with respect to dependent claims 2, 15-18, 25-27, 29, and 32. Because Barbara does not teach or suggest the deficiencies of Foster, claims 2, 15-18, 25-27, 29, and 32 are not obvious in view of the cited references and should therefore be allowed.

**Rejection of Claims 10-12 under 35 U.S.C. § 103(a)**

Claims 10-12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Foster in view of Balto, "Creating Payment System Network: The Tie That Binds or an Honorable Peace?" ("Balto"). This rejection is respectfully traversed. Claims 10-12 are dependent upon claim 1 which is submitted to be allowable in view of Foster for the reasons set forth above. Accordingly, claims 10-12 should be allowable under Foster for these reasons as well. Further arguments are reserved with respect to dependent claims 10-12. Because Balto does not teach or suggest the deficiencies of Foster, claims 10-12 are not obvious in view of the cited references and should therefore be allowed.

**Rejection of Claims 19-22 under 35 U.S.C. § 103(a)**

Claims 19-22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Foster in view of Bowen, "Behind the Spree in Payments for C2C" ("Bowen"). This rejection is respectfully traversed. Claims 19-22 are dependent upon claim 1 which are submitted to be allowable in view of Foster for the reasons set forth above. Accordingly, claims 19-22 should be allowable under Foster for these reasons as well. Further arguments are reserved with respect to dependent claims 19-22. Because Bowen does not teach or suggest the deficiencies of Foster, claims 19-22 are not obvious in view of the cited references and should therefore be allowed.

**CONCLUSION**

The undersigned representative respectfully submits that this application is in condition for allowance, and such disposition is earnestly solicited. If the Examiner believes that the prosecution might be advanced by discussing the application with the undersigned representative, in person or over the telephone, we welcome the opportunity to do so. In addition, if any additional fees are required in connection with the filing of this response, the Commissioner is hereby authorized to charge the same to Deposit Account 50-4402.

Respectfully submitted,

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